

## HEADWATERS

IBLA 98-280

Decided November 4, 1998

Appeal from a Decision Record/Finding of No Significant Impact of the Grants Pass Resource Area Office, Bureau of Land Management, Oregon, approving issuance of special Recreation Use Permit MRP-251.

Affirmed.

1. Environmental Quality: Environmental Statements—National Environmental Policy Act of 1969: Environmental Statements

A Decision Record/Finding of No Significant Impact will be affirmed if the record shows that BLM took a "hard look" at all relevant factors, and an Environmental Analysis establishes that a careful review of environmental consequences of the action has been made. A party challenging such a decision must show that the determination was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared.

APPEARANCES: Tom Dimitre, Ashland, Oregon, for Appellant; Wayne M. Kuhn, Acting District Manager, Medford District Office, for the Bureau of Land Management.

### OPINION BY ADMINISTRATIVE JUDGE TERRY

Headwaters has appealed from the April 14, 1998, Decision Record/Finding of No Significant Impact (FONSI) by the Area Manager, Grants Pass Resource Area, Medford District, Bureau of Land Management (BLM), Oregon, approving issuance of Special Recreation Use Permit MRP-251. The Permit, for jet boat races on the Rogue River, on May 23 through May 25, 1998, was issued on May 19, 1998. BLM's Decision to approve the Permit was based on an update of a 1997 Environmental Assessment (EA) prepared for the 1997 event.

On May 22, 1998, the Board issued an Order denying Headwaters' request for a stay of implementation of BLM's Decision. In that Order, we found that Headwaters had not demonstrated, as alleged, that BLM had failed to

conduct a proper EA. We found further that Headwaters had not shown it would suffer any irreparable harm should the stay not be granted.

In its Statement of Reasons, Headwaters contends that the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4321 (1994), was violated because BLM prepared no specific EA for the 1998 event. Headwaters asserts that BLM could not rely on the 1997 EA because that EA was a "one year EA which did not analyze the effect of yearly races or new issues that were brought up or inadequately analyzed last year." Headwaters points out that the 1997 EA addressed two races, on May 24 and 25, 1997, and is therefore "not a current document."

In his Answer, the Acting District Manager (ADM) asserts that an EA was conducted "for the 1998 permit amendment." The ADM contends that Headwaters' focus on the 1997 date is a minor point because, while the 1998 race was a separate event, "the environmental issues are not different." The ADM denies that BLM blindly applied the 1997 EA to the 1998 event. He states that after the 1997 event there was an "extensive interagency review of that event, the terms under which the event was conducted and the actual effects vs. those anticipated in the pre-event assessment." When BLM received the application for the 1998 event, it again conducted an evaluation which is memorialized in a January 16, 1998, scoping letter by the Area Manager. Therein, the Area Manager noted that the proposed action and alternatives were the same except for "minor modifications." He explains that these modifications related to safety and resulted from a post-race evaluation by the Oregon State Marine Board, BLM, the Sheriff's Office and the Grant's Pass Active Club (the permit applicant).

The Area Manager observed that monitoring during the 1997 race confirmed that noise and wildlife impacts were minimal, as anticipated in the EA. The scoping letter solicited comments and gave interested parties the opportunity to identify "new resource or social concerns, unique or sensitive features in the permit area, or any other new issues or concerns specific to the permit area and the type of event." The scoping letter then suggested a list of pertinent topics on which comments were invited.

In his Answer to the appeal, the ADM states that no new environmental issues were raised in response to the scoping letter. Thereupon, BLM determined that the 1997 EA "adequately presented and described the anticipated effects in a manner appropriate for informed decision making regarding the issuance of a 1988 permit amendment."

[1] An EA is prepared to allow an agency to assess whether an Environmental Impact Statement is required under NEPA, 42 U.S.C. § 4332(2)(C) (1994). A FONSI will be affirmed if the agency took a hard look at the environmental consequences of the action, considering all relevant matters of environmental concern, and made a convincing case either that no significant impact will result or that any such impact will be rendered insignificant by mitigating measures. See Maryland-National Capitol Park & Planning Commission v. U.S. Postal Service, 487 F.2d 1029, 1039-40 (D.C.).

Cir. 1973); Haines Borough Assembly, 145 IBLA 14, 21-22 (1998); Idaho Natural Resources Legal Foundation, Inc., 96 IBLA 19, 23, 94 I.D. 35, 38 (1987). A party challenging a FONSI finding must show that the determination was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Mere differences of opinion provide no basis for reversal of BLM's Decision if it is reasonable and supported by the record on appeal. Oregon Natural Resources Council, 139 IBLA 16, 22 (1997), and cases there cited.

Headwaters has not suggested an environmental concern which was not, but should have been, evaluated for the 1998 event. Headwaters has failed to meet its burden of demonstrating either an error of law or fact or that BLM's analysis failed to consider a substantial environmental problem of material significance to the proposed action. Headwaters has alleged, but not shown that BLM was required, under NEPA, to prepare an individual EA for the 1998 event. Given the circumstances, we are unaware of such a requirement, and the record is persuasive evidence that the effort would merely have duplicated administrative work already accomplished. The record shows that BLM again reviewed the 1998 event in light of environmental consequences and that it concluded no consequences of significance, other than those identified in the 1997 EA, and confirmed by monitoring, could be expected. BLM's actions and conclusions are reasonable in view of its administrative responsibilities under NEPA, as outlined above.

To the extent not discussed herein, Headwaters' other arguments have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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James P. Terry  
Administrative Judge

I concur:

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Gail M. Frazier  
Administrative Judge

